

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
AMERICATEL CORPORATION	)	
	)	SCL-T/C-20010119-00001
Joint Application of Empresa Nacional de	)	
Telecomunicaciones S.A. and STET International	)	
Netherlands N.V. for Authority to Transfer	)	
Control of Americatel Corporation, Holder of a	)	
Cable Landing License	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** April 30, 2001

**Released:** May 1, 2001

By the Chief, Telecommunications Division, International Bureau:

**I. Introduction**

1. In this Order, we grant the application of Empresa Nacional de Telecomunicaciones S.A. (“ENTEL-Chile”) and STET International Netherlands N.V. (“STET”) (together, “Applicants”) seeking authority to transfer control of the cable landing license interests held by Americatel Corporation (“Americatel”) in the PAN AMERICAN Cable System (“PAN AMERICAN”) from ENTEL-Chile to STET.<sup>1</sup>

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<sup>1</sup> See Application of Empresa Nacional de Telecomunicaciones S.A. and STET International Netherlands N.V., Joint Application for Authority to Transfer Control of Americatel Corporation, Holder of a Cable Landing License, File No. SCL-T/C-20010119-00001, filed January 19, 2001 (“Application”). Applicants concurrently filed applications to transfer control of Americatel’s international Section 214 authorization and domestic Section 214 authorization, which have been granted. See *Americatel Corporation*, File No. ITC-T/C-20010119-00047, Transfer of Control Grant of Authority, Public Notice No. TEL-00356 (TD/IB rel. Feb. 22, 2001). See also *Common Carrier Bureau Grants Consent for STET International Netherlands N.V. to Acquire Domestic Telecommunications Lines Held by Americatel Corporation*, Public Notice, DA 01-842 (CCB rel. Feb. 22, 2001). In addition, Applicants filed applications to transfer control of the international Section 214 authorization and earth station licenses held by Americatel’s affiliate AmericaSky Corporation. See Letter from Troy F. Tanner and Maria L. Carraffa, Counsel for STET International Netherlands N.V., to Magalie Roman Salas, Secretary, Federal Communications Commission (filed Jan. 19, 2001). See also *AmericaSky Corporation*, File No. ITC-T/C-20010119-00048, Transfer of Control Grant of Authority, Public Notice No. TEL-00356 (TD/IB rel. Feb. 22, 2001); *AmericaSky Corporation*, File No. SES-T/C-20010119-00126, Application for Consent to Transfer of Control, Report No. SES-00257 (SRD/IB rel. Jan. 31, 2001); *AmericaSky Corporation*, File No. ISP-PDR-20010119-00002, Petition for Declaratory Ruling, Report No. TEL-00346NS (TD/IB rel. Jan. 31, 2001). The grant of this application, File No. SCL-T/C-20010119-00001, is without prejudice to Commission action on related applications that may remain pending as of the date of this action.

2. On January 20, 1998, we granted a joint application by Americatel and numerous other parties, pursuant to the Cable Landing License Act,<sup>2</sup> and Executive Order No. 10530,<sup>3</sup> to land and operate a common carrier submarine fiber optic cable system, called PAN AMERICAN, extending between the U.S. Virgin Islands, Aruba, Venezuela, Colombia, Panama, Ecuador, Peru and Chile.<sup>4</sup>

3. Americatel, a corporation organized under the laws of the State of Delaware, is authorized to provide U.S. international service pursuant to its Section 214 authorization. It provides domestic interexchange service pursuant to blanket Section 214 authority and domestic intrastate service pursuant to various state authorizations. Americatel's ownership and voting interests in the PAN AMERICAN cable are each 0.41633 percent.<sup>5</sup>

4. ENTEL-Chile, a corporation organized under the laws of Chile, is one of the largest domestic and international long distance carriers in Chile.<sup>6</sup> We previously have found that ENTEL-Chile does not control bottleneck services or facilities that can be used to discriminate against unaffiliated U.S. carriers terminating traffic in Chile.<sup>7</sup> ENTEL-Chile holds a 100-percent ownership interest in ENTEL International B.V.I. Corporation ("ENTEL B.V.I."), a company organized under the laws of the British Virgin Islands. ENTEL B.V.I., in turn, holds an 80-percent ownership interest in Americatel.<sup>8</sup>

5. STET, a corporation organized under the laws of The Netherlands, is a wholly owned subsidiary of Telecom Italia S.p.A. ("Telecom Italia"), one of the world's largest fixed telecommunications operators that is incorporated as a joint stock company under the laws of Italy. In addition to wireline operations, Telecom Italia, through its subsidiary Telecom Italia Mobile S.p.A., is one of the largest mobile telecommunications operators in Europe. Through international investments in Europe and Latin America, Telecom Italia and its subsidiaries also provide data services, satellite telecommunications services, and information technology software and services. Two subsidiaries of Telecom Italia – Telecom Italia of

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<sup>2</sup> An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

<sup>3</sup> Exec. Ord. No. 10530 *reprinted as amended* in 3 U.S.C. § 301.

<sup>4</sup> See *Americatel Corp. et al., Joint Application for a License to Land and Operate a Submarine Cable Network, the PAN AMERICAN Cable System*, File No. SCL-LIC-19970421-00002, formerly File No. SCL-97-001, Cable Landing License, 13 FCC Rcd 850 (TD/IB 1998) ("Cable Landing Order"). See also *Americatel Corp. et al., Joint Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as amended, to Construct, Acquire, and Operate Capacity in a Digital Submarine Cable System, the PAN AMERICAN Cable System*, File No. ITC-97-221, Memorandum Opinion, Order and Authorization, 13 FCC Rcd 857 (TD/IB 1998) ("Section 214 Order").

<sup>5</sup> See Application at 2.

<sup>6</sup> *Id.*

<sup>7</sup> See *Section 214 Order*, at para. 6, and *Cable Landing Order*, at para. 10, citing *Americatel Corp., Petition for Expedited Modification of Regulatory Status from Dominant to Non-dominant for International Communications Services with Chile*, File Nos. ISP 96-002, ITC-96-263, 11 FCC Rcd 9995 (IB 1996), at para. 9.

<sup>8</sup> See Application at 2.

North America and Telemedia International USA, Inc. – hold Section 214 authorizations.<sup>9</sup>

6. STET currently owns a 26.16 percent voting interest in ENTEL-Chile. Through a stock purchase agreement, STET will acquire an additional 25.63 percent voting interest in ENTEL-Chile from Chilquinta Telecomunicaciones S.A. (10.62 percent) and Chilquinta S.A. (15.01 percent). STET will acquire an additional 2.9789 percent voting interest in ENTEL-Chile from some of the minority shareholders. As a result of these transactions, STET will hold a controlling interest of 54.76 in ENTEL-Chile, and thus STET will acquire an indirect controlling interest in Americatel once the transactions are consummated.<sup>10</sup>

7. On February 12, 2001, we granted the Applicants' request for Special Temporary Authority to permit transfer of control of the PAN AMERICAN cable landing authorization held by Americatel from ENTEL-Chile to STET.<sup>11</sup>

## II. Comments

8. We placed the Application on public notice on January 26, 2001.<sup>12</sup> We received no comments. Pursuant to Section 1.767(b) of the Commission's rules,<sup>13</sup> the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the transfer of control request.<sup>14</sup> The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to approving the Applicants' request to transfer control of the cable landing license of Americatel from ENTEL-Chile to STET.<sup>15</sup>

## III. Discussion

9. Under Section 1.767(a)(8) of the Commission's rules, applicants are required to disclose their affiliations with foreign carriers.<sup>16</sup> STET has certified that it is not a foreign carrier within the meaning of

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<sup>9</sup> See generally Application at 3.

<sup>10</sup> See generally Application at 4.

<sup>11</sup> See Request of Empresa Nacional de Telecomunicaciones S.A. and STET International Netherlands N.V. for Special Temporary Authority for a Cable Landing License Transfer of Control Application, File No. SCL-STA-20010202-00003 (granted Feb. 12, 2001).

<sup>12</sup> See *Non Streamlined International Applications Accepted for Filing*, Report No. TEL-00345NS (rel. Jan. 26, 2001). In the Public Notice we inadvertently listed the Application as File No. SCL-MOD-20010119-00001 and have corrected the file number in this Memorandum Opinion and Order.

<sup>13</sup> 47 C.F.R. § 1.767(b).

<sup>14</sup> Letter from George S. Li, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Jan. 24, 2001).

<sup>15</sup> Letter from Richard C. Beaird, Acting United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (April 27, 2001).

<sup>16</sup> See 47 C.F.R. § 1.767(a)(8).

Section 63.09(d) of the Commission's rules,<sup>17</sup> but that it is affiliated with foreign carriers in the following countries: Argentina, Austria, Brazil, Bolivia, Canada, Chile, China, Cuba, El Salvador, France, Germany, Greece, Guatemala, Hong Kong, Hungary, India, Ireland, Israel, Italy, The Netherlands, Peru, Russia, Romania, San Marino, Spain, Ukraine, the United Kingdom and the Federal Republic of Yugoslavia.<sup>18</sup> According to the Application, STET is affiliated with the following foreign carriers in Peru and Chile, landing points for PAN AMERICAN: TIM Peru, S.A.C. and ENTEL-Chile.<sup>19</sup> Applicants assert that all destination markets, including Peru and Chile, are WTO member countries.<sup>20</sup> Applicants further assert that the market share in the international transport and local access markets of each of its affiliated foreign carriers in Peru and Chile is significantly less than 50 percent.<sup>21</sup> We conclude, therefore, that STET's affiliated foreign carriers do not possess market power that would allow them to discriminate against unaffiliated U.S. carriers through control of bottleneck facilities in Peru or Chile, and we see no reason to deny Applicants' request to transfer control of the cable landing license of Americatel to STET on the basis of STET's foreign affiliations.

10. We also conclude that the transfer of control of ENTEL-Chile's interest to STET raises no competitive concerns. Specifically, we conclude that STET's ownership of a 0.41633 percent interest in PAN AMERICAN will not cause competitive concerns. Additional cables serve the route, and more are coming on line.<sup>22</sup> Moreover, the amount of ownership interest that STET will acquire in PAN AMERICAN as a result of this transfer of control is insubstantial.

11. Applicants assert that the proposed transfer of control will serve the public interest because Americatel will be backed by Telecom Italia, an entity with management experience, workforce and means to strengthen Americatel's ability to bring competitive integrated telecommunications services to consumers in the United States. Applicants state that the transfer of control will allow Americatel to manage its telecommunications operations more efficiently, thereby permitting greater investment in facilities, customer service and technological innovation. Therefore, Applicants state, the transfer of control will

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<sup>17</sup> See 47 C.F.R. § 63.09(d).

<sup>18</sup> See Application at 9-10.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Existing cables, in addition to PAN AMERICAN, include: 360Americas (authorized on a non-common carrier basis to serve, among other destinations, the United States and Venezuela); Americas-I (authorized on a common carrier basis to serve, among other destinations, the U.S. Mainland, U.S. Virgin Islands, and Venezuela); Americas-II (authorized on a common carrier basis to serve, among other destinations, Florida, Puerto Rico, the U.S. Virgin Islands, and Venezuela); Maya-1 (authorized on a common carrier basis to serve, among other destinations, the United States, Colombia, and Panama); PAC (authorized on a non-common carrier basis to serve, among other destinations, the United States, Panama, and Venezuela); SAC (authorized on a non-common carrier basis to serve, among other destinations, the United States, Chile, Colombia, Panama, and Peru); SAM-1 (authorized on a non-common carrier basis to serve, among other destinations, the United States, Chile, and Peru); and TCS-1 (authorized on a common carrier basis to serve, among other destinations, the U.S. Mainland, Puerto Rico, and Colombia). Planned cables include: ARCOS-1 (authorized on a non-common carrier basis to serve, among other destinations, the U.S. Mainland, Puerto Rico, Colombia, Panama, and Venezuela).

result in a company better equipped to accelerate its growth as a competitive telecommunications service provider. Finally, Applicants contend that the transfer of control will be consummated in a seamless fashion that will be transparent to customers and not in any way inconvenience or cause harm to Americatel's customers.<sup>23</sup>

12. Upon consideration of the record in this proceeding, and in view of the foregoing, we conclude that grant of the transfer of control sought in the Application will serve the public interest and is consistent with the Cable Landing License Act.

13. We modify the initial authorization to reflect these transactions. We do not modify the initial authorization in any other respect.

#### **IV. Ordering Clauses**

14. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, IT IS ORDERED that the Application, File No. SCL-T/C-20010119-00001, IS GRANTED, the transactions listed herein are authorized, and the PAN AMERICAN Cable Landing License (File. No. SCL-LIC-19970421-00002, formerly File. No. SCL-97-001) IS HEREBY MODIFIED to reflect those transactions.

15. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this Order.<sup>24</sup>

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast  
Chief, Telecommunications Division  
International Bureau

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<sup>23</sup> See generally Application at 4.

<sup>24</sup> See 47 C.F.R. § 1.4(b)(2).